



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 29, 1994

Ms. Lan P. Nguyen
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR94-772

Dear Ms. Nguyen:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552. We assigned your request ID# 28514.

The City of Houston (the "city") has received a request for information relating to an aggravated robbery/attempted sexual assault incident. Specifically, the requestor seeks all information relating to incident number 131089093-L, including the offense report, follow-up investigations, photographs and videotapes, witness statements, and diagrams and measurements.¹ You seek to withhold some of the requested information, which you have submitted to us for review, and claim that section 552.108 of the Government Code excepts it from required public disclosure.

Section 552.108 excepts from required public disclosure

(a) [a] record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . [and]

¹We understand that the city has made available to the requestor the requested information to the extent that it includes information generally found on the first page of the offense report. *See generally Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). In addition, you advise us that the city is not in possession of the requested witness statements and diagrams and measurements. Ordinarily, the Open Records Act does not require a governmental body to provide information that it does not possess. *See, e.g.*, Open Records Decision No. 558 (1990).

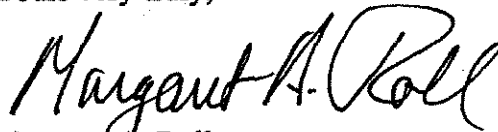
(b) [a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution

Gov't Code § 552.108. When applying section 552.108, this office distinguishes between information relating to cases that are still under active investigation and other information. Open Records Decision No. 611 (1992) at 2. In cases that are still under active investigation, section 552.108 excepts from disclosure all information except that generally found on the first page of the offense report. *See generally Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Otherwise, when the "law enforcement" exception is claimed, the agency claiming it must reasonably explain, if the information does not supply the explanation on its face, how its release would unduly interfere with law enforcement. Open Records Decision No. 434 (1986) at 3 (citing *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977)). Whether information falls within the section 552.108 exception must be determined on a case-by-case basis. *Id.* at 2.

You advise us that the requested information relates to an on-going police investigation. Accordingly, we conclude that, except for first-page offense report information, the city may withhold the requested information under section 552.108 of the Government Code.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Margaret A. Roll
Assistant Attorney General
Open Government Section

MAR/GCK/rho

Enclosures: Submitted documents

Ref.: ID# 28514

cc: Mr. David Wood
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(w/o enclosures)